Vol. 5 No. 2 April - June 2000

SMARA UPDATE

The Quarterly Newsletter of the Department of Conservation - Office of Mine Reclamation

State Mining and Geology Board Assumes El Dorado County's Inspection Authority

As reported in the last issue of *SMARA UPDATE*, the State Mining and Geology Board (board) held a public hearing on March 9, 2000, to consider assumption of some or all of El Dorado County's lead agency responsibilities under SMARA. The hearing followed the board's issuance of a second 45-day notice to the county in which it cited deficiencies for five surface mines (Weber Creek Quarry, Diamond Quarry, Eureka Slate Mine, Snows Road Pit, and Garden Valley Aggregates) that had not been resolved to the board's satisfaction. The second 45-day notice informed the county that it would hold a hearing in the county to consider board assumption of any of the county's SMARA powers.

SMARA specifies six ways that a lead agency can fail in its SMARA responsibilities. Failure in any one of those areas mandates that the board assume any of the lead agency's SMARA responsibilities. The deficiencies are:

1) that approved reclamation plans or financial assurances are not consistent with the law;
2) that the lead agency failed to inspect or cause the inspection of surface mining operations as required by law;
3) that it failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining as required by law;
4) that it failed to take appropriate enforcement actions as required by law;
5) that it intentionally misrepresented the results of inspections required by law; and,
6) that it failed to submit information to the Department of Conservation as required by law.

The Executive Officer's report for the March 9 public hearing questioned much of the information about the mines that had been reported by the county, especially information collected during site inspections. In particular, the report cited significant discrepancies in the reporting of disturbed acreage. According to the report, "If the State is to rely on the integrity of the County's inspection process to determine whether a surface mining operation is in compliance with SMARA, then the County must ensure that those inspection reports are accurate and represent a true description of the mine site's SMARA activities. The County has failed to perfect the integrity of these reports."

The Executive Officer's report also found fault with the county in regards to failing to seek forfeiture of financial assurances and carrying out reclamation as required by law; and for failure to take appropriate enforcement actions as required by law. The report concluded that the core problem with El Dorado County's SMARA program is the inspections, and that the other compliance issues may have been avoided

(Continued to page 2)

CONTENTS

State Mining and Geology Board Assumes El Dorado County's Inspection Authority

(Continued from page 1)

had the inspections been conducted in the manner envisioned by SMARA.

After a six and one-half hour public hearing that included testimony from the county, affected mine operators, local citizens, and representatives of industry and local government associations, the board adopted the Executive Officer's recommendation that it assume responsibility for all annual mine inspections conducted in El Dorado County. Under law, the board must discharge this responsibility for at least three years, at which time the authority can be granted back to the county, provided that, after a public hearing, the board finds that the county has corrected the deficiencies.

In assuming inspection authority, the board stipulated the following:

- the board will contract to do the inspections, with the county invited to participate;
- the Department of Conservation will participate in the inspections as a technical advisor;
- the county will be asked to co-sign the inspection reports; and,
- inspection reports will go before the board for approval. The board will discuss any violations, and both the county and Department of Conservation will be notified and asked to take action.

The Department of Conservation believes that the board's action was a reasonable response to the problems identified in El Dorado County's administration of SMARA, and looks forward to playing a constructive role in its advisory capacity.

Glenn Stober,
Assistant Director

1999 Annual Reports Mailed

The Office of Mine Reclamation mailed the 1999 Mining Operation Annual Report form and instructions on May 5 to the 1500 actively reporting surface mines in California. Any operator not receiving the report form by June 1 should contact OMR by calling (916) 323-9198. As in the past, the State Mining and Geology Board has set July 1 as the due date for submitting the annual report and fee to OMR. Please note that the reporting fees have changed so please check the fee schedule before submitting any report(s).

Revegetation of Sulphur Bank Mercury Mine – Phase II

In the Winter 1997 issue of *SMARA UPDATE*, we published an article discussing OMR's efforts to develop a revegetation strategy for the Sulphur Bank Mercury Mine, an EPA-listed Superfund Site. Sulphur Bank is an abandoned mine located on the eastern shore of the Oaks Arm of Clear Lake, Lake County, California. We reported that our strategy would become part of the EPA's Remedial Design for this Superfund Site. The principal objectives of the plan were to conserve established vegetation, eliminate or reduce the amount of imported soil required, minimize potential mobilization of contaminated sediments or runoff into Clear Lake, and utilize a local source of plant materials.

To assess our proposal, we installed revegetation test plots in January 1996 in two areas of the mine: on the Clear Lake shoreline tailings area (Shoreline) and on tailings in the northeastern portion of the mine (Tailings). We designed the test plots in two phases. Phase I examined soil treatments using waste processing lime and organic compost, alone and in combination, against a control. Due to time constraints, we purchased scrub oak (*Quercus berberidifolia*), foothill pine (*Pinus sabiniana*), toyon (*Heteromeles arbutifolia*), and coyote brush (*Baccharis pilularis*) from commercial suppliers. These

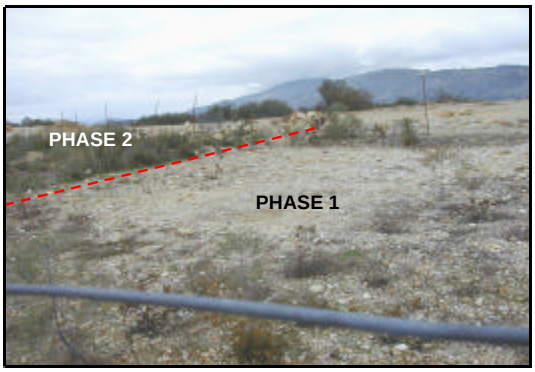
(Continued to page 3)

Revegetation of Sulpher Bank Mercury Mine – Phase II

(Continued from page 2)

plants were propagated from materials collected at the same general elevation range and climate zone as the mine.

Phase II test plots were installed in March 1997 adjacent to the Phase I plots. Phase II used plants grown from seed collected on site, including western redbud (*Cercis occidentalis*), toyon, scrub oak, deerweed (*Lotus scoparius*), foothill pine, bush monkeyflower (*Mimulus aurantiacus*), blue wild-rye, and squirreltail (*Elymus elymoides*). Phase II trials contrasted soil treatments similar to those in Phase I, with the addition of mycorrhizae (beneficial fungi), amendment depth, and weed mat treatments. When Phase II plants showed signs of phosphorus deficiency, we supplemented the soil amendments with a single application of ammonium phosphate to provide nitrogen and phosphorus. Due to the lateness of installation, all Phase II plants were irrigated during the spring and early summer 1997. Approximately 14 liters of water were applied to each plant every two weeks. Watering ceased in June. As in Phase I, we collected baseline plant data when plants were installed, followed by measurements during and after the growing season. Baseline data, consisting of height plus two perpendicular diameter measurements, was used to determine plant volume.

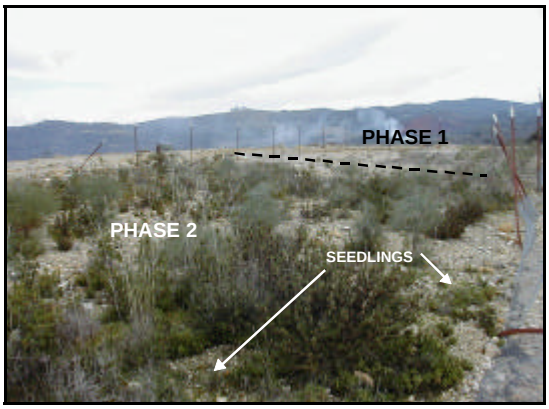


Results – Phase I Data

Phase I data collected 30 months (three growing seasons) after planting showed that the lime/organic treatment generated significantly greater plant growth than other soil treatments. On the Tailings plots, increase in plant volume for foothill pine was greater than all other species. For the Shoreline plots, toyon growth was significantly greater than all other species. The surface pH values of the mine soils are highly variable and dramatically different with depth (for example, alkaline at the surface and acid at depth). These data indicated that the substrate needed to be ripped mechanically, mixed vertically, and then amended according to ambient soil acidity.

Results – Phase II Data

Data was collected for Phase II plots 16 months (two growing seasons) after installation. Phase II trials showed that use of lime/organic resulted in the greatest plant growth and that this amendment had a significantly better effect if incorporated to a depth of about 60 cm rather than applied to the surface. In the Tailings area, bush monkeyflower and then scrub oak outperformed all other species while on the Shoreline plots, deerweed outperformed all other species, followed by blue wild-rye and bush monkeyflower. Weed mats used in the Shoreline area did not have a measurable effect on plant growth. As of the June 1999 monitoring period, application of mycorrhizae did not significantly improve plant growth.



Conclusions

Based on our test plot data, we determined that it was feasible to revegetate Sulphur Bank Mercury Mine with native plants found at the mine (indigenous species) by amending soils with lime and organic matter. Plants grown from site-collected seed outperformed the commercial plants – even when identical species were used. Moreover, blue wild-rye, bush monkeyflower, deerweed, and squirreltail are reproducing from seed in the test plots. The improved plant growth in the highly acid Shoreline area demonstrates that lime incorporation deep into the soil provides growth benefits to plants, probably through greater water availability.

The beneficial effects of mycorrhizal colonization is well

(Continued to page 5)

Message from the Director

Darryl Young

I don't think I'm going out on a limb with the following assumption: SMARA lead agencies want the Department of Conservation to stay out of their way for the most part, but be there to help when needed.

Being there to help is the easy part. It's a driving force of everything we do here at DOC, and the particular focus of the Reclamation and Reporting and Compliance Units in regard to the Surface Mining and Reclamation Act. Through workshops, face-to-face meetings and reviews of reclamation plans and financial assurances, we put our expertise to work for local jurisdictions.

But what about the other half of the equation? How can lead agencies keep the DOC in help mode rather than enforcement mode? Well, to paraphrase from the movie *Jerry Maguire*, "help us help you." To that end, and with apologies to David Letterman, I've put together the following "Top Five Ways to Keep the Department of Conservation Out of Your Backyard."

1) Don't issue a permit to mine before you have an approved reclamation plan and financial assurance.

2) Insist that operators provide reclamation plans that meet or exceed the standards set forth in SMARA.

3) Make time to do the annual mine inspections required by law. This is the best way to ensure operators remain in compliance with their mining/reclamation plans and that financial assurance amounts are adequate.

4) Don't accept financial assurances that aren't in compliance with the law. SMARA clearly identifies the means by which an operator may assure a mine will be properly reclaimed -- surety bonds, irrevocable letters of credit or trust funds. So, please, no baseball card collections.

5) Got mines out of compliance? Don't allow them to stay that way. The economic benefits of mining should not be allowed to outweigh environmental and public safety concerns.

On paper, it looks fairly simple. We all know, however, that in practice SMARA administration is no easy task. So again, we come back to the first part of the equation: the DOC is ready to provide help with any aspect of SMARA. We can help lead agencies stay in compliance, and that is, without a doubt, the best way to keep DOC in Sacramento.

What's Going On

Editor's Note: This column lists educational conferences and workshops related to mining and mine reclamation that will be occurring in California in the near future. The list is not meant to be comprehensive.

Western Field Ornithologists
25th Annual Meeting
July 5-9, 2000
Kernville, Kern County
Cost: ?
Information: (760) 378-3044

California Mineral Education Foundation
Mineral Education Conference
August 3-4, 2000
San Diego State University
Cost: $45
Information: Carol Berry, (916) 655-1050

American Fisheries Society
Rapid Biological Assessment Workshop
August 14-16, 2000
Sierra College, Rocklin
Cost: $275
Information: Kathy Hieb, (209) 942-6078

Floodplain Management Association
19th Semi-Annual Conference
"Fluvial Geomorphology & Floodplain Management"
September 13-15, 2000
Hyatt Regency, Sacramento
Cost: ?
Information: Laura Hromadka, (949) 766-8112

Association of Engineering Geologists
Annual Meeting 2000 – Resource Management and Watershed Restoration
September 19-26, 2000
Doubletree Hotel, San Jose
Cost: Varies w/membership
Information: (979) 845-0142 or www.aegweb.org

Revegetation of Sulpher Bank Mercury Mine – Phase II

(Continued from page 3)

documented in the literature. Mycorrhizae provide the greatest benefit to plants growing under stress. We could not measure effects from the mycorrhizal treatment during the short period of Phase II monitoring. The supplemental phosphorus amendment and the abundant rainfall during the winter of 1997 and spring of 1998 may have ameliorated stress on plants and masked beneficial mycorrhizal effects.

Use of site-indigenous plant materials is a priority since the native plants at the mine are adapted to the substrate conditions and are performing well in field trials. The efficacy of our screening and amendment specification procedures is demonstrated in the vigorous growth of many of the selected plant materials. The benefits of organic and lime amendments in combination are also demonstrated in the revegetation trials. The range of plant growth responses demonstrates that some of the tested species can establish and then colonize the amended substrates. Revegetation monitoring will continue as practicable and will include additional soils analyses and assessment of root development and penetration into the substrate. Further monitoring will suggest species that can persist on the site even though they may be slow to establish initially.

Application to Other Revegetation Projects

Revegetation of mined lands is an intrinsic part of site reclamation. Studies such as those at Sulphur Bank Mercury Mine provide valuable information that is applicable to revegetation projects at other mines. These benefits are summarized below:

1) Soil was not salvaged at Sulphur Bank prior to mining. Existing vegetation patterns 50 years after cessation of mining at Sulphur Bank document the slow rate of plant establishment under altered soil conditions. Soil salvage conserves the native seed bank and beneficial microorganisms, as well as soil organic matter. In many areas, revegetation is not successful unless soils are salvaged and reapplied. This approach is also less costly than intensive soil amelioration.

2) Plants in stressful environments are especially dependent on mycorrhizal fungi. These symbiotic fungi are sensitive to soil chemical conditions. Soil salvage will often provide the material necessary for fungal colonization.

3) Native plants found *at mine sites* should form the basis of the revegetation mix unless exotic species will be used. Our experiments showed that plants grown from site-collected seed outperformed the same species grown from non-indigenous seed.

4) Colonizing species are important components of revegetation. For example, we found blue wild-rye growing on a range of soils from disturbed soils (pH 3) to native soils having a neutral pH. This range of acid tolerance is indicative of the inherent variability of many native plants. Plants growing in highly disturbed areas of mines, such as along roads, should be included in seed mixes.

5) A diverse plant palette favors successful revegetation. We found that some species established quickly following installation while others did not. By including colonizing species and slower growing perennials in a plant mix, initial erosion control is achieved, allowing long-term development of shrubs and trees.

6) Revegetation monitoring is essential. Long-term success cannot be determined over only one or two monitoring periods, especially if slow-growing species are used for revegetation.

7) Monitoring data should be rigorously collected on standardized forms. These data will demonstrate the success or failure of the revegetation effort and contribute to the growing information base for mined land reclamation.

Mary Ann Showers,
Environmental Specialist

The Abandoned Mine Lands Unit now has a toll free number for the public to use to report abandoned mines. If you know of or find an abandoned mine please call:

1-877-OLD MINE

Remember to stay out and stay alive!

Reclamation Tips

Don't Bust the Crust, It's Alive!

The next time you are in shrublands, grasslands and woodlands of the arid and semi-arid southwest, look carefully at the soil surface for a living crust. This crust is a complex mosaic of living organisms such as algae, cyanobacteria (blue-green algae), bacteria, lichens, mosses, liverworts, and fungi. Often, you can see the actual crust organisms. Sometimes the crust is hard to detect except with a hand lens or microscope. In the past, the crust has been referred to as "cryptogamic soil crust." Technically, that name excludes cyanobacteria and fungi, often the major components of the crust. The term "microbiotic soil crust" is currently recommended.

The importance of the microbiotic soil crust in native vegetation is underestimated. Over the past 30 years, researchers have found that microbiotic soil crusts are an integral component of arid and semiarid ecosystems. The microbiotic soil crusts benefit plant establishment by:

- Preventing soil erosion. The microbiotic crust forms a physical barrier to wind and water erosion. Soil particles are physically held together as a result of sticky polysaccharides that are secreted by some soil crust organisms.

- Increasing soil fertility. The availability of soil nutrients is increased by polysaccharides that can act as an adhesive between soil particle surfaces and nutrients. Tightly held nutrients will not leach, thus becoming more available to plants. In addition, many of the organisms associated with the microbiotic soil crust photosynthesize during cold, wet seasons when most plants are dormant. The by-products of this metabolic cycle can add considerable organic carbon to the soil. Many cyanobacteria and lichens fix nitrogen by converting atmospheric nitrogen to a form that is readily used by plants. Soil carbon and nitrogen are both necessary for plant growth.

- Creating "safe sites" for seed germination. The bumpy texture of the crust and small crevices afford "safe sites" for the accumulation of seeds and moisture. Microbiotic crust organisms also appear to favor native over weedy seedlings, and to somehow improve the formation of mycorrhizae in the underlying soil.

Historically, microbiotic soil crusts have not developed in areas where wildlife with hooves were present, such as the Rocky Mountains. Trampling from animals such as elk and antelope, physically destroyed the microorganisms. The microbiotic soil crusts are sensitive to disturbance resulting from grazing, mining, wildfire and off road vehicles. Research is being conducted on developing a protocol for the salvage and management of microbiotic crusts as well as developing commercially available crust inoculum. Dr. Ted St. John has developed a microbiotic crust inoculum, but it is not yet in use in reclamation. For an update, see www.mycorrhiza.org or contact St. John at doctored@mycorrhiza.org.

Key is pointing to microbiotic crust

The next time you are in arid and semi-arid areas, look carefully for the crust and remember… Don't bust the crust, it's alive!

Karen Wiese,
Plant Ecologist

Executive Officer's Report

At its February 10, 2000 regularly scheduled business meeting held in Hanford, Kings County, the State Mining and Geology Board took the following actions on these SMARA issues:

1. Adopted Resolution 2000-01 certifying the new SMARA ordinance for the City of Fremont. This new certification is the result of the board's program to encourage lead agencies with pre-1991 ordinances to bring their ordinances into accordance with current SMARA.

2. The board heard the appeals from two Kings County surface mine operators who received administrative penalties from the Department of Conservation for alleged violations of SMARA.

Hearing 1: Pires Farms and Michael R. Evans v. Director of Department of Conservation (Case No. 91-16-7004-99A). The director had issued an administrative penalty jointly and severally in the amount of $11,000 for the alleged failure to provide a New Mine Report, a lead agency approved reclamation plan, and a lead agency approved financial assurance as required under Public Resources Code Section 2207. In light of the evidence presented and following testimony from representatives of Pires Farms, Michael R. Evans, Kings County, and the DOC, the board determined that Messrs. Pires and Evans had failed to supply the statutorily required documents to the director. The board also found that even after repeated notices by the county and the DOC the operators had not taken serious steps to come into compliance with SMARA. The board upheld the administrative penalty in the amount of $11,000.

Hearing 2: Glenn C. Archer Agricultural Gypsum v. Director of Department of Conservation (Case No. 91-16-0004-99A). The director had issued an administrative penalty in the amount of $10,000 for the alleged failure to provide a lead agency approved reclamation plan and an approved financial assurance as required by Public Resources Code Section 2207. In light of the evidence presented, which consisted of an administrative record submitted by the DOC, written correspondence and oral testimony from Mr. Archer's attorney, and oral presentations from Kings County staff and DOC staff, the board found that the violations of SMARA in the director's Notice and Order were true and correct. The board upheld the administrative penalty in the amount of $10,000. However, based on assurances provided by Mr. Archer's attorney, the board issued its own Order stating that if Mr. Archer provided a reclamation plan and financial assurance acceptable to the county not later than May 1, 2000, the administrative penalty would be reduced to $500. Otherwise the full $10,000 amount would immediately be due and payable on May 2, 2000.

(Editor's Note: Mr. Archer successfully met his deadline and the penalty was reduced to $500).

At its March 9, 2000 regularly scheduled business meeting held in Placerville, El Dorado County, the board took the following actions on these SMARA issues:

1. Adopted Resolution 2000-02 certifying the new SMARA ordinance for the City of Bakersfield. This new certification is the result of the board's program to encourage lead agencies with pre-1991 ordinances to bring their ordinances into accordance with current SMARA.

2. Accepted the Annual Mine Fee Schedule for Calendar Year 2000 as recommended by the Joint Committee. This schedule establishes the amount of fees that must be paid to the DOC by July 1, 2000 by individual surface mine operators based on their calendar year 1999 production.

3. Accepted proposed regulatory language to amend PRC § 3550.13 that deals with the mineral land designation of construction aggregate resources in Fresno County. This is part of the board's efforts to categorize additional mineral resource areas as "Designated Mineral Lands" based on recommendations from the State Geologist.

4. Accepted proposed regulatory language that describes the criteria for the board to contract for professional services under SMARA.

5. Accepted a Petition for Mineral Classification of aggregate resources from an applicant from Butte County. The State Geologist will conduct a geological investigation of the

(Continued to page 8)

Executive Officer's Report

(Continued from page 7)

mineral resource site to determine the classification status and present a report to the board on his findings. The board will distribute the completed report to Butte County and the operator.

6. Following a six and one half hour public hearing conducted under PRC § 2774.4 and following the board's 45-Day Notice to El Dorado County, the board concluded that the county had not adequately performed its enforcement and administrative functions under SMARA. The board found that the county had: (1) failed to inspect or cause the inspection of surface mining operations as required by SMARA; (2) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA; and, (3) failed to take appropriate enforcement actions as required by SMARA. In light of the evidence in the record before the board, the board determined to assume the county's authority to conduct annual surface mine inspections.

The board concluded that there had been little coordination between the county and the surface mine operators regarding: (a) the amount of land disturbed by the mining activities; (b) the actual boundaries of mining operations; (c) the operating status of the mines; and, (d) the amount of land "vested" at the mine site, and if this vested land has been disturbed by mining activities since January 1, 1976.

In order for the surface mine operator to be fairly and equitably assessed for financial assurance costs, and to likewise ensure the people of the county that adequate funds are available to reclaim the surface mines in their county, accurate site surveys and thorough site evaluations are required. The county has not performed these, leading to conflicts between mine operators and the county, and the county and the Department of Conservation, concerning the adequacy of financial assurance amounts.

If the county and the state are to adequately perform their responsibilities to administer and enforce SMARA, and if the mine operators are to be equitably and fairly regulated, then an accurate and thorough knowledge of the mine site conditions and parameters must be available upon which both the regulated and the regulators' decisions can be based.

John Parrish,
Executive Officer

Compliance Corner

Your Reclamation Plan: The Review and Approval Process

In keeping with SMARA's intent that adverse environmental effects are prevented, that mined lands are adaptable for alternate uses, and that hazards to public health and safety are eliminated, mine operators must prepare and obtain approval of an appropriate reclamation plan for the proposed mining operation. The reclamation plan serves as the benchmark document by which the ultimate reclamation of the site will be accomplished and its completion judged. It also serves as the basis for the equally important reclamation cost estimate, which in turn, determines the amount of an operation's financial assurance.

SMARA requires the operator of a surface mine to obtain a permit and reclamation plan from the local lead agency and prescribes minimum procedures for the review and approval of the plan. These procedures can be broadly generalized as a three step process: 1) Permit and reclamation plan submittal to and review by the lead agency; 2) review and comment by the Office of Mine Reclamation (OMR), and 3) lead agency response to OMR's comments and approval (or denial) of the plan.

In most cases, the county or city in which the operation resides is considered the lead agency and is responsible for review and final approval of permits, reclamation plans and reclamation plan amendments. In cases where a jurisdiction has not adopted, or lacks a State Mining and Geology Board certified SMARA ordinance, the board assumes the lead agency's SMARA authority (with the exception of granting land use permits which remains the lead agency's exclusive jurisdiction). Reclamation plan review and approval can also be appealed to the board by an operator or other third party in cases of lead agency inaction.

SMARA §2774(a) requires that lead agencies adopt ordinances to establish procedures for the review

(Continued to page 9)

Compliance Corner

(Continued from page 8)

and approval of reclamation plans, financial assurances, and the issuance of permits to mine. While many of the local administerial processes are left to the lead agency's discretion, the board has prepared a model ordinance that includes minimum prerequisites in the review and approval process. Most local mining ordinances parallel the board's model ordinance, but it's important to check with the lead agency to determine all locally applicable requirements.

Applications for a reclamation plan should be made on forms provided by the lead agency. Filing procedures, application fees, or additional requirements are established by the lead agency. It's important to consult with them at the outset in order to sidestep bottlenecks or misunderstandings. For example, many lead agencies require that a reclamation plan and Conditional Use Permit be processed concurrently as a single package.

The reclamation plan application should address the minimum requirements of SMARA (PRC § 2772-2773), state regulations (CCR § 3500 - 3713), and all required environmental review forms to satisfy CEQA and any county/city review guidelines, as well as any other requirements imposed by the lead agency. It's equally important that all documentation relevant to the reclamation plan be submitted with the application at one time and that the correct number of copies are provided. Attention to these details will minimize undue delays in processing the application.

The lead agency also bears the responsibility of soliciting comments from any responsible agencies under CEQA. This is normally accomplished by submitting the application to the State Clearinghouse for distribution.

When the lead agency deems the reclamation plan application to be complete and prior to approving the plan, they must submit the plan to OMR for review and comment. When submitting the plan for review, the lead agency must submit all relevant and pertinent information prepared or used in reviewing the reclamation plan. Upon submittal to OMR, the lead agency must also certify that the reclamation plan complies with all applicable requirements of the minimum reclamation standards in effect at the time.

OMR's Reclamation Unit is responsible for the state level review and comment. SMARA provides that OMR may have as much as 30 days to review and comment on the submitted plan. While OMR is not obligated to comment on plans, in practice all plans are reviewed and comments provided well within the allotted time frame. For tips on expediting the reclamation plan review process see "How to Speed Up Your Reclamation Plan Review" in the winter 1998 edition of *SMARA UPDATE* (Vol. 3 No.1).

Under SMARA, the lead agency is under no similar constraints regarding their review period (the Permit Streamlining Act requires lead agencies to process applications involving a Negative Declaration or Mitigated Negative Declaration within 180 days and those involving an Environmental Impact Report within one year). The lead agency is, however, obligated to review OMR's comments and prepare a written response describing the disposition of the issues raised. This may include incorporating the comments in the reclamation plan or, in cases where the lead agency is in disagreement with the recommendations, a detailed response as to why the recommendations were not accepted.

After OMR review and comment and completion of the environmental review (CEQA), the lead agency must schedule consideration of the application at a noticed public hearing before the lead agency's Planning Commission. Lead agency staff prepare a report with their recommendations for consideration by the Planning Commission. The Planning Commission may then take action to approve, conditionally approve, amend or deny the permit and reclamation plan. If approved, the reclamation plan (and permit) is generally subject to a 10-day waiting period before the approval takes final effect. This provides an opportunity for opponents to appeal a Planning Commission determination.

An applicant must also sign a Statement of Responsibility acknowledging their responsibility to reclaim the mined lands. This statement is kept in the lead agency's files. Upon sale or transfer of the operation, the new operator must provide a new Statement of Responsibility.

Remember that approval of the reclamation plan and/or permit alone does not authorize that mining can immediately take place. SMARA also requires that an approved financial assurance mechanism be posted with the lead agency and Department of Conservation before operations commence.

Cam Downey,
Compliance Engineer

Financial Assurance Tips

Editor's Note: This article is the result of an e-mail exchange between a lead agency and OMR regarding the establishment of a Certificate of Deposit using the Assignment of CD form. A copy of this form may be obtained by contacting OMR at (916) 323-9198.

Question #1: Should the Assignment of CD document include an attachment consisting of a bank-certified copy of the CD itself, so that we know it physically exists, and that the issuing bank, CD serial number and value of the certificate are as described in the assignment?
Answer: The fully executed original assignment document and CD should be held by the lead agency with copies provided to the operator, issuing bank (assignment only) and the Department of Conservation. Attaching a bank-certified copy of the CD is therefore unnecessary.
Question #2: Should the bank be referred to by name throughout the Assignment of CD document, with the phrase "and its successors in interest" immediately following the bank name?
Answer: Yes, the bank should be referred to by name (its exact dba or corporate name). Adding the phrase "and its successors in interest" after the bank name is additional assurance that the bank is adequately named if it happens to be sold. The assignment form is purposely generic and minor modifications may be made to meet the specific needs of the lead agency.
Question #3: Should the Assignment of CD document spell out where the CD shall be kept, and that it shall be accessible without litigation or court order?
Answer: Once the CD has been issued and the assignment fully executed, the lead agency should take possession of both original documents. We strongly recommend that the lead agency store them in a safe or file which has restricted access. The purpose of the assignment is to give ownership of the account to the lead agency and the DOC so it is unnecessary to add a stipulation that the account be accessible without litigation.
Question #4: Should the Assignment of CD document spell out how much, how often, to whom, and to what account the CD's interest shall be paid?
Answer: Interest that accrues in the CD belongs to the operator. If the issuing bank will allow it, an arrangement should be made so that this interest is paid into a separate account owned by the operator. Such an arrangement need not be made a stipulation in the assignment unless requested by the bank.
Question #5: Isn't there an early withdrawal penalty if the CD is liquidated prior to its maturity date? How should such a penalty be accounted for in order to ensure that there are sufficient funds for reclamation once the CD has been cashed?
Answer: Determine from the bank what the maximum early withdrawal penalty would be and add that amount to the financial assurance amount when establishing the CD.
Question #6: Should the Assignment of CD form include the procedures for drawing the funds?
Answer: No. It is not necessary to list or reference the lead agency's administrative procedures to draw on the account in the assignment. Again, the primary purpose of the assignment is to transfer ownership of the account to the lead agency and the DOC. Including the administrative procedures (found in Section 2773.1(b) of SMARA) may lead to the assignment being interpreted as an escrow agreement with the bank acting as the agent. This defeats the purpose of establishing a CD using the assignment form.
Question #7: If only a portion of the financial assurance is needed to complete reclamation, is it possible to draw only part of the CD account?
Answer: No. The entire CD must be liquidated. Any money remaining after the bank's withdrawal penalty (if any) and the completed reclamation work, must be returned to the operator.
Question #8: If the operator files for bankruptcy, is the account safe from claims by the bankruptcy court?
Answer: No. The account is established using the mine operator's taxpayer identification number. Under bankruptcy law the bankrupt's estate is controlled by the court; however a properly assigned CD should be treated as a secured debt and should not be available to pay other creditor claims of the bankrupt operator.

(Continued to page 11)

Financial Assurance Tips

(Continued from page 10)

Question #9: Is it possible for the operator to use the CD account simultaneously for another obligation?
Answer: No. The CD is made payable to the lead agency and the DOC. In addition, the lead agency will have possession of the original certificate.
Question #10: Is the Assignment of CD form a 3-party agreement binding upon the mine operator, the issuing bank and the lead agency/DOC? If the answer is yes, why aren't there signature blocks for the lead agency and DOC?
Answer: The Assignment of CD is a legally binding contract made by the operator and the bank issuing the CD account, transferring ownership of that account to the lead agency and the DOC. The assignment does not obligate the bank to perform reclamation. The assignment does reflect the operator's agreement to perform reclamation as required by the approved reclamation plan, and to provide financial assurance for that reclamation. It is unnecessary for either the lead agency or the DOC to be signatories to the assignment document.

Andrew Rush,
Environmental Specialist

1999/2000 Legislative Update

AB 2254, Gallegos
Version as amended, 4/26/2000
Status: Currently pending in the Assembly Appropriations Committee.
Summary: This bill would provide that no more than one-third of the members of the State Mining and Geology Board (SMGB) may be currently employed by, or receive compensation from, entities that own or operate mines.

SB 244, Solis
Version as amended, 1/27/2000
Status: Passed the Senate Floor on 1/31/2000; currently pending in the Assembly Natural Resources Committee.
Summary: This bill would make changes to the Surface Mining and Reclamation Act (SMARA) and would limit those changes to apply only to the San Gabriel Basin Water Quality Authority. The current changes include requiring specified water agencies to comment on reclamation plans which affect groundwater, and that financial assurances be sufficient to complete the reclamation. The bill also reaffirms that local mineral ordinances can be more strict than SMARA.

SB 666, Sher
Version as amended, 1/13/2000
Status: Passed the Senate Floor on 1/31/2000; currently pending in the Assembly Natural Resources Committee.
Summary: This bill would increase the cap on the Surface Mining and Reclamation Account from $2 million to $3 million and would delete a section which requires a mandatory decrease if federal mineral lease revenues paid back to California fall below $20 million. This bill would also allow state funds appropriated to the Department of Conservation to be expended on abandoned mine reclamation.

SB 1897, Monteith
Version as introduced, 2/24/2000
Status: Currently pending in the Senate Natural Resources Committee.
Summary: This bill would allow local ordinances to provide for periodic review of approved reclamation plans if the lead agency determines that revisions to reclamation plans may be necessary to protect the public health and safety and the environment.

Inspection Workshop Scheduled!

Extra! Extra! Hear all about it! This year's Inspection Workshop will be held on August 3-4 in the City of Corona. All American Asphalt in Corona has volunteered to host the always popular field trip associated with this workshop.

Additional information and registration forms will be mailed in late June. Although this workshop has been offered free of charge in the past, there will be a $35 fee to register for this year's class. This fee will be used to offset the department's costs for providing workshop materials and transportation to and from the mine site during the field trip.

Space is limited so completed registration forms (with fee) should be returned to this office as early as possible. Questions regarding the workshop may be directed to Andrew Rush at (916) 323-9198 or via e-mail at arush@consrv.ca.gov.

The *SMARA Update* is a quarterly publication of the Department of Conservation's Office of Mine Reclamation, 801 K Street, MS 09-06, Sacramento, California 95814, (916) 323-9198. Our web site address is http://www.consrv.ca.gov/omr. The purpose of this publication is that of imparting the latest in reclamation tips, as well as changes in legislation or interpretation of existing statutes by court decisions.

Director: Darryl Young
Deputy Director: Pat Meehan
Assistant Director for OMR: Glenn Stober
Newsletter Editor: Andrew Rush

Department of Conservation
OFFICE OF MINE RECLAMATION
801 K Street, MS 09-06
Sacramento, CA 95814